

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
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CHABRIER de LASSAUNIERE et al.) Art Unit: 1626
)
Application Number: 10/575,249) Examiner: Anderson, Rebecca L.
)
Filed: April 10, 2006) Confirmation No.: 7098
)
For: 4-PHENLTHIAZOLE AND 4-PHENYLMIDIZOLE DERIVATIVES AND THEIR
USE AS MEDICAMENTS FOR THE TREATMENT OF NEURODEGENERATIVE
DISEASES, PAIN AND EPILEPSY

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION RESTRICTION REQUIREMENT

Sir,

Responsive to the Office Action Restriction Requirement (the "Restriction Requirement") mailed August 28, 2007, in the above-captioned application, please consider the following remarks.

REMARKS

Restriction Requirement

The restriction requirement subjected the pending claims to restriction under 35 U.S.C. § 121 and 372, between one of the following inventions:

- Group I. Claims 1, 2, 4, and 5 drawn to imidazole containing products.
- Group II. Claims 1, 3, 4, and 5, drawn to thiazole containing products.
- Group III. Claims 6-9 drawn to methods of treatment with thiazole containing products.
- Group IV. Claims 6, 7, 9, and 10, drawn to methods of treatment with imidazole containing products.

Election

Applicants respectfully disagree and traverse this Restriction Requirement. However, in order to be fully responsive to the Restriction Requirement, Applicants provisionally elect the subject matter of Group II for prosecution on the merits, represented by claims 1, 3, 4, and 5, drawn to thiazole containing products.

Applicants traverse on the grounds that a search of the provisionally elected Group II would likely encompass the subject matter of Group III, just as a search for Group I would likely encompass the subject matter of Group IV, and thereby would not constitute an undue burden to the Examiner. One of the criteria for a proper requirement for restriction between patentably distinct inventions is that there must be a serious burden on the Examiner if restriction is required. *See* M.P.E.P. § 803.01. Applicants submit that a search of the subject matter of provisionally elected Group II is likely to be broad enough to encompass the art relevant to Group III, and that this would not constitute a serious burden on the Examiner.

Additionally, as cited by the Examiner, 37 C.F.R. § 1.475(b) requires that Groups II and III and Groups I and IV be examined together. Specifically, 37 C.F.R. § 1.475(b) states that:

a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combination of categories...(2) a product and a process of use of said product

In the instant case, Group II is directed to a thiazole containing product, and Group III is directed to a process of using the thiazole containing product. Likewise, Group I is directed to an imidazole containing product, and Group IV is directed to a process of using the imidazole containing product. Regarding 37 C.F.R. § 1.475(c), Applicants respectfully disagree with the Examiner's contention that the claims are drawn to more than a product and a method. There are no claims directed to the other categories of invention specified in 37 C.F.R. § 1.475(b). Specifically, there are no process of making claims or apparatus claims in the application. Therefore, in accordance with 37 C.F.R. § 1.475(b), Groups II and III and Groups I and IV necessarily have unity.

Applicants submit that it would not constitute an undue burden to search the subject matter of Group II and Group III together as well as Group I and Group IV together, and that these Groups necessarily have unity under 37 C.F.R. § 1.475(b). Accordingly, Applicants respectfully request reconsideration and withdrawal of the Restriction Requirement pertaining to Groups II and III as well as Groups I and IV under 35 U.S.C. § 121 and 372.

CONCLUSION

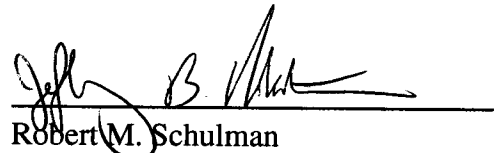
An indication of allowance of all claims is respectfully solicited. Early notification of a favorable consideration is respectfully requested. Applicants believe that there are no additional fees required for this response. However, the Commissioner is hereby authorized to charge payment of any additional fees required with this communication or credit any overpayment to the deposit account of Hunton & Williams, Deposit Account Number 50-0206.

Respectfully submitted,

Hunton & Williams LLP

Dated: September 11, 2007

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